IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.1573 (SS) OF 2005

Amar Singh, S/o late Sri Maha Singh,
R/o Village Barakot, Tehsil Barakot,
District – Chamapwat. .....Petitioner.

Versus

1. Uttaranchal Jal Sansthan, Dehradun, through its Chief General Manager.
2. General Manager, Uttaranchal Jas Sansthan (Kumaon), Nainital.
3. Executive Engineer, Uttaranchal Jal Sansthan, Champawat. .....Respondents.

Mr. Rakesh Kumar Joshi, Advocate for the petitioner.
Sri Rakesh Thapliyal, Advocate for the respondent no.1.
Sri J.P. Joshi, Advocate for the respondents no.2 and 3.

Dated: 21.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to regularize the services of the petitioner to the post of Chaukidar from the date his initial appointment. Further prayer has been made for a writ of mandamus commanding the respondents to pay the regular pay scale to the petitioner along with other consequential benefits and to pay arrear of pay scale of the post of Chaukidar.

Brief stated, father of the petitioner was initially appointed on 01.08.1972 as Fitter in Local Self Government Technical Department after constitution of Kumaon Jal Sansthan under the provisions of U.P. Water Supplied and Sewerage Act, 1975. Technical Department stood transferred

to the Kumaon Jal Sansthan on 02.10.1975. On 14.09.1996, the father of the petitioner died while in service leaving behind the petitioner and his mother.

On 09.11.1998, the petitioner was appointed under the provisions of Dying in Harness Rules by the General Manager of Kumaon Jal Sansthan on the post of Chaukidar on a consolidated pay of Rs. 925/- in the Work Charge Establishment and was posted in the office of Executive Engineer, Uttaranchal Jal Sansthan Champawat (Respondent No.3).

In pursuance of the order-dated 09.11.1998, the petitioner submitted his joining report in the office of respondent no. 3 and respondent no.3 vide order dated 16.11.1998 posted the petitioner in the office of Assistant Engineer Kumaon Jal Sansthan unit Barakot, Lohaghat.

According of the petitioner is that since 16.11.1998, he is continuously working under the control of respondents without any interruption in service.

Submission of the petitioner is that since the petitioner has been appointed under dying-in-harness, he should have been given regular appointment. Counsel for the petitioner has placed reliance on the judgment of this Court passed in Writ Petition no. 9 (ss) of 2002 reported in ***2005 (1) Uttaranchal Decisions page 379 Bhaguli Devi vs. State of Uttaranchal and others*** and on the judgment of this Court passed in ***Writ Petition No. 1412 (ss) of 2004 Smt. Nandi Devi vs. State of Uttaranchal and others.*** Relevant observations made in ***Smt. Nandi Devi Vs. State of Uttaranchal and others 2005 (1) U.D. 669,*** are quoted below:-

"It is not disputed that the petitioner's husband was working with the respondent on monthly salay basis since

1981 till his death i.e. 11.12.2001. It is also not disputed that the petitioner was given appointment under Dying-in-Harness Rules on the post of Beldar on daily-wage basis. This fact is also apparent formt he appointment letter, which is annexed along with the writ petition. Contention of the petitioner is that since the petitioner was provided appointment under Dying-in-Harness Rules, her appointment cannot be treated similar to those appointed as daily-wage basis. The petitioner has placed reliance on the judgment of this Court in Writ Petition No. 91 (S/S) 2003 reported in 2005 (1) Uttaranchal Decisions Page 379 Bhaguli Devi Vs. State of Uttaranchal and others. She has further placed reliance on the judgment of Allahabad High Court in Civil Misc. Writ Petition No. 39127 of 1994 Ravi Karan Singh Vs. State of U.P. and others reported in 1999(3) U.P.L.E.B.C. Page 2263 wherein the division Bench has held that the appointment provided under Dying-in-Harness Rules shall be treated as permanent appointment and not a temporary appointment."

It is not disputed that the petitioner's father was a work charge employee of the Uttaranchal Jal Sansthan and he died while in service. It is also not disputed that the petitioner has been provided appointment by the respondent on the post of Chaukidar vide order dated 09.11.1998 under dying-in-harness Rules on work charge basis. It is well settled law that appointment provided under dying-in-harness shall be treated as permanent appointment and not as temporary one. In spite of repeated time granted to the respondents, no counter affidavit has been filed by them. In absence of counter affidavit Standing Counsel could not show any reason as to why the petitioner was not appointed on regular basis despite the fact that the petitioner was appointed under dying-in-harness.

I find force in the submission of learned counsel for the petitioner.

Since the petitioner was appointed under dying-in-harness Rules, his appointment should have been treated on regular basis. In the circumstances and for the reasons stated above, the writ petition is allowed. The respondents are directed to treat the services of the petitioner under regular establishment as a regular employee and not under the work charge establishment. No order as to costs.

(Rajesh Tandon, J.)

21.03.2006
Rathour